

ORIGINAL

(Del. Rev. 12/98)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Timothy Matthews

(Name of Plaintiff or Plaintiffs)

v.

CIVIL ACTION NO. 17C-2005-00152

Mountaire Farms of
Delaware

(Name of Defendant or Defendants)

COMPLAINT

1. This action is brought pursuant to Title VII of the Civil Rights Act
(Federal statute on which action is based)
for Retaliation discrimination related to Retaliation jurisdiction exists by virtue of
(In what area did discrimination occur? e.g. race, sex, religion)

(Federal statute on which jurisdiction is based)

2. Plaintiff resides at P.O. Box 1453
(Street Address)
Seaford, Sussex Delaware 19973
(City) (County) (State) (Zip Code)
(302) 381-7197
(Area Code) (Phone Number)

3. Defendant resides at, or its business is located at P.O. Box 1320
(Street Address)
Millshoro Sussex Delaware 19966
(City) (County) (State) (Zip Code)

4. The alleged Retaliation discriminatory acts occurred on 15, 8, 2004
(Day) (Month) (Year)

5. The alleged Retaliation discriminatory practice ☐ is ☒ is not continuing.

6. Plaintiff(s) filed charges with the Dept. of Labor
(Agency)
24 N.W. Front Street Millford Sussex Del. 19963
(Street Address) (City) (County) (State) (Zip)
regarding defendant(s) alleged discriminatory conduct on: 12-27-04
(Date)

7. Attach decision of the agency which investigated the charges referred in paragraph 6 above.

8. Was an appeal taken from the agency's decision? Yes ☐ No ☐

If yes, to whom was the appeal taken? _____

9. The ^{Retaliation}~~discriminatory~~ acts alleged in this suit concern: (Describe facts on additional sheets if necessary)

Attached copy !

10.

Defendant's conduct is ^{Retaliation}~~discriminatory~~ with respect to the following:

- A. ☒ Plaintiff's race
- B. ☐ Plaintiff's color
- C. ☐ Plaintiff's sex
- D. ☐ Plaintiff's religion
- E. ☐ Plaintiff's national origin

11. Plaintiff prays for the following relief: (Indicate the exact relief requested)

Punitive damage \$200,000.00
Monetary damage \$ 80,000.00
total \$280,000.00

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 5-18-06

Timothy Matthews
(Signature of Plaintiff)



ATTORNEYS AT LAW
www.margolisedelstein.com

DELAWARE OFFICE:
1509 GILPIN AVENUE
WILMINGTON, DE 19806
302-777-4680
FAX 302-777-4682

KERI L. MORRIS, ESQUIRE
kmorris@margolisedelstein.com

September 20, 2005

PHILADELPHIA OFFICE:*
THE CURTIS CENTER, 4TH FLOOR
601 WALNUT STREET
INDEPENDENCE SQUARE WEST
PHILADELPHIA, PA 19106-3304
215-922-1100
FAX 215-922-1772

Ms. Trina Wheedleton
Labor Law Enforcement Officer
Delaware Department of Labor
Division of Industrial Affairs
24 N.W. Front Street
Milford, DE 19963

HARRISBURG OFFICE:*
3510 TRINDLE ROAD
CAMP HILL, PA 17011
717-975-8114
FAX 717-975-8124

RE: Timothy Matthews v. Mountaire Farms of Delaware
Case No. 04120905/17CA500152

PITTSBURGH OFFICE:
310 GRANT STREET
THE GRANT BUILDING, SUITE 1500
PITTSBURGH, PA 15219
412-281-4256
FAX 412-642-2380

Dear Trina:

I am responding on behalf of my client, Mr. Timothy Matthews, to your letter dated September 5, 2005 regarding the above-captioned matter. I have had the opportunity to meet with my client and discuss the specifics of his case and provide the following in support of Mr. Matthews' position.

SCRANTON OFFICE:
THE OPPENHEIM BUILDING
409 LACKAWANNA AVENUE
SUITE 3C
SCRANTON, PA 18503
570-342-4231
FAX 570-342-4841

With respect to Mr. Matthews' disability allegations, he has advised that he never made a complaint of disability discrimination. At the time he met with the representative of the Department of Labor in December 2004, he had indicated that he was out for certain medical reasons. It was based upon this admission that the Officer believed Mr. Matthews wanted to file a charge for disability discrimination. Mr. Matthews is in agreement that Mountaire did not discriminate against him based on his disability and therefore has no additional evidence to provide in support of this claim.

SOUTH NEW JERSEY OFFICE:*
SENTRY OFFICE PLAZA
216 HADDON AVENUE, 2ND FLOOR
P.O. BOX 92222
WESTMONT, NJ 08108
856-858-7200
FAX 856-858-1017

With respect to Mr. Matthews' allegations of race discrimination and retaliation, below is a factual background with respect to the allegations:

NORTH NEW JERSEY OFFICE:
CONNELL CORPORATE CENTER
THREE CONNELL DRIVE
SUITE 6200
BERKELEY HEIGHTS, NJ 07922
908-790-1401
FAX 908-790-1486

In or around August 2004, prior to leaving for a run, Mr. Matthews learned that someone had placed an obstruction to his brake line on his vehicle. He made a complaint to his immediate supervisor, Rolland Lynch. After Mr. Matthews advised Mr. Lynch of his complaint, Mr. Lynch had advised Mr. Matthews that, "if he [Lynch] finds out who did this, they are out of here". According to Mr. Matthews, after further investigation by the company and after learning that it was Mr. Betts who placed the obstruction in Mr. Matthews' brake line, Mr. Lynch's demeanor

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changed and said that it would be handled internally. Mr. Matthews continued to follow up with the appropriate officials at Mountaire and was ultimately yelled at by Mr. Lynch when he stated, "what do you want me to do?" During these conversations between Mr. Matthews and Mr. Lynch, Mr. Matthews advised Mr. Lynch that he believed the behavior was based on race, i.e. that the incident was racially motivated and that Mr. Matthews felt that he was the subject of race discrimination.

Thereafter, and as a result of his internal complaint of race discrimination, Mr. Matthews believes he was the subject of retaliatory treatment by Mountaire Farms. Specifically, in December 2004, he had been out on medical leave for a condition called vertigo. He was subsequently cleared by his primary care physician to return to work. He returned to work and provided his medical clearance to the nurse working at Mountaire Farms. The nurse advised Mr. Matthews that he needed a more specific note, saying that "he was medically cleared to return to work with no restrictions." Mr. Matthews complied with this request. Thereafter, the nurse cleared Mr. Matthews to return to work and he began work that same day. Mr. Matthews' supervisor, Mr. Lynch, saw him that day and based upon information and belief, Mr. Lynch immediately contacted the nurse. Mr. Lynch thereafter contacted Mr. Matthews on his cell phone and advised him to return to the plant facility. When Mr. Matthews returned to the plant facility, he was advised to return to the nurse's office. When he returned to the nurse's office, she advised him that he was not cleared to return to work and he needed to see a neurologist for his condition and to obtain medical clearance. Mr. Matthews complied with the request of Mountaire Farms and saw a neurologist who subsequently cleared him to return to work. Mr. Matthews went back to the nurse at Mountaire Farms and provided the medical clearance note by his neurologist. He once again returned to work and was advised he needed to see the company physician. Mr. Matthews agreed, but the appointment was not able to be scheduled until the beginning of January 2005. All the while, Mr. Matthews was not receiving any compensation because he was not working.

Through Human Resources, Mr. Matthews explored the possibility of obtaining short-term disability while he was out, which he did finally receive. In the beginning of January 2005, Mr. Matthews went and saw the company physician. He was asked by the company physician why he was there to see him because the company physician was not certain on the medical reason for the appointment. The company physician examined Mr. Matthews and cleared him to return to work. It is important to note that the company physician questioned Mr. Matthews as to why Mountaire Farms needed the company physician to clear him to return to work when a neurologist had already provided a note supporting medical clearance.

After Mr. Matthews left the appointment with the company physician, he questioned the receptionist as to why it took so long to obtain the medical appointment. According to Mr. Matthews, the receptionist seemed confused by his query. Her response was, "normally a request to see the company physician is complied with on the same day or not later than the next day". However Mr. Matthews had to wait almost an entire month, again all the while, not receiving any compensation of any sort.

As you know, the *prima facie* elements to establish a retaliation case under Title VII of the Civil Right Act is that Charging Party must: (1) engage in protected activity;

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(2) he must be subject to some type of adverse employment action; and, (3) there must be a causal connection between the protected activity and the adverse employment action.

It is clear that Mr. Matthews engaged in protected activity when he advised Mr. Lynch that he believed he was the subject of racial discrimination after the incident in August 2004 when Mr. Betts placed some type of object in Mr. Matthews' brake line causing an obstruction.

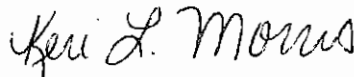
The fact that Mr. Matthews was not allowed to work during the month of December and the beginning of early January and not receiving pay qualifies as an adverse employment action to satisfy the second element of a retaliation claim.

Finally, it is clear that a causal connection between Mr. Matthews' comment regarding racial discrimination and the subsequent adverse employment action because after Mr. Matthews made his internal complaint of race discrimination he had to go through many obstacles to return to work.

Base on the foregoing, we respectfully request that the Delaware Department of Labor consider this additional information and either continue its investigation or issue a reasonable cause finding for retaliation in favor of Mr. Matthews and against Mountaire Farms of Delaware. If you have any questions or require any additional information, please do not hesitate to contact me.

Thank you in advance for your attention and cooperation in this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Keri L. Morris".

KERI L. MORRIS

KLM:cab

cc: Mr. Timothy C. Matthews

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

06-330

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

DEFENDANTS

(b) County of Residence of First Listed Plaintiff Timothy Matthews
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Montaire Farm of Del.
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

2006 MAY 19 PM 2:44
CLERK OF DISTRICT COURT
DISTRICT OF DELAWARE

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One for Defendant)

- Citizen of This State ☒ 1 PTF ☐ 1 DEF Incorporated or Principal Place of Business In This State
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business In Another State
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DJWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION

Brief description of cause: Retaliation based on Discrimination (Race)

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

5-19-06

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE